Supreme Court, U.S.
FILED

No. 10-567

MAY 17 2010
OFFICE OF THE CLERK

In The
Supreme Court of the United States

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**Michael B. King,**

**Petitioner,**

**v.**

**Eric Farris, Karen Aromatorio**
**And City Of Byron**

**Respondents.**

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**On Petition For Writ Of Certiorari**
**To Te United States Court Of Appeals**
**For Te Eleventh Circuit**

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# PETITION FOR WRIT OF CERTIORARI
**(Amended)**

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## *QUESTION PRENSENTED*

1. **Whether the district court had subject matter jurisdiction over a civil action filed in state court that did not allege a federal cause of action.**

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## OPINION BELOW

The Eleventh Circuit Court of Appeals' decision is found in Appendix "B".

## JURISDICTION

The Eleventh Circuit filed its decision on December 16, 2009 and the order denying a rehearing was filed on February 16, 2010. The Petition for Writ of Certiorari was filed on May 17, 2010. The Amended Petition was timely served by certified mail on July 16, 2010.

## STATUTORY PROVISIONS INVOLVED

### 28 U.S.C. Section 1331

The district court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

### 28 U.S.C. Section 1343

The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

28 U.S.C. 1441(a)

"Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court which the district courts of the United States have original jurisdiction may be removed by the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

28 U.S.C. Section 1441(b)

"Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties."

## STATEMENT OF CASE

On or about May 6, 2008, petitioner filed his Complaint for Damages in Peach County Superior Court. On or about June 6, 2008, the respondents Filed a Notice of Removal and Motion to Dismiss Complaint in the federal district court alleging the district court had jurisdiction over petitioner's complaint because he raised a federal question under 42 U.S.C. Sections 1983, 1988, and 1991 and the Fourth and Fourteenth Amendments to the United States Constitution. Petitioner filed a motion to remand case to state court on the grounds that he did not allege a federal cause of action in his complaint.

On December 3, 2008, the district court judge entered an order denying petitioner's motion to remand and granting respondents' motion to dismiss complaint on the grounds that petitioner failed to state a federal claim. The district court imposed sanctions on petitioner because his complaint did not state a federal claim. A judgment was entered on January 16, 2009. On or about February 17, 2009, petitioner filed his notice of appeal.

On April 14, 2009, the appeal was docketed in the Eleventh Circuit Court of Appeals. Briefs were filed by both parties. On or about December 16, 2009, the Eleventh Circuit panel affirmed the district court's judgment. On January 5, 2010,

petitioner filed a petition for rehearing. On February 16, 2009, The Circuit Court denied the rehearing petition. On May 17, 2010, petitioner filed his petition for Writ of Certiorari. On July 16, 2010, petitioner filed his Amended Petition by certified mail.

## REASONS FOR GRANTING THE PETITION

1. **Certiorari Should Be Granted To Consider The Important Question Of Whether The District Court Has Subject Matter Jurisdiction Over A Civil Action Filed In State Court That Did Not Allege A Federal Cause Of Action.**

"[I]t is the duty of this Court to see to it that the jurisdiction of the [district] court, which is defined and limited by statute is not exceeded. The duty we have frequently performed on our own motion." ***Louisville & N.R. Co. v. Mottley,*** 211 U.S. 149, 29 S.Ct. 42, 43 (1908). "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States." 28 U.S.C. 1331 "It is the settled interpretation of these words ["suit . . . arising under the Constitution or laws of the United States"] as used in [28 U.S.C. Section 1331], conferring jurisdiction, that a suit arises under the constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that constitution." Id. At 43. The words "all civil actions" were subsequently substituted for "all suits of a civil nature, at common law or in equity". Id.

In *City of Kenosha v. Bruno,* 412 U.S. 507, 93 S.Ct. 222 (1973), this Court granted a petition for writ of certiorari to decide an important question of jurisdiction. ***Whether the district court had jurisdiction over a civil complaint that did not allege a federal cause of action against the defendant municipalities.*** Id. In ***Bruno,*** the plaintiffs alleged that they brought their action under 42 U.S.C. Section 1983 and that the district court therefore had jurisdiction 28 U.S.C. Section 1343. Id. At 2226. The district court concluded it had jurisdiction over the complaint under 28 U.S.C. Section 1343(3). This court held a city is not a "person" under 42 U.S.C. Section 1983 where equitable relief and damages are sought and therefore, the district court erred in concluding it had jurisdiction over the civil complaint under 28 U.S.C. Section 1343(3). Id. At 2225-2226.

"***Because of the phrase 'civil action authorized by law', section 1343 jurisdiction is unavailable in the absence of an appropriate cause of action. In this sense, failure to state a claim under sections 1981, 1983 and 1985 or other appropriate legal authority has the effect of depriving federal courts of subject matter jurisdiction under section 1343" Campbell v. Gadsden County School District, 534 F.2d 650*** (C.A. 5th Cir. 1976) Furthermore, alleging a violation under 42 U.S.C. Section 1983 does not give federal courts jurisdiction over a civil action. ***Quaries v. State of Texas,*** 312 F. Supp. *835 (S.D. Tex. 1970).*

In the present case, the Eleventh Circuit held as following: "[Petitioner] has conflated the requirements for a district court to assert jurisdiction with those necessary for a claim to survive a motion to dismiss

under Federal Rule of Civil Procedure 12(b)(6). His complaint expressly relies upon federal law and thus the district court did not err in exercising its subject-matter jurisdiction." The Eleventh Circuit stated in support of its decision that "[a] complaint alleging a colorable cause of action confers district court jurisdiction even if the complaint is ultimately dismissed for failure to state a claim." Citing ***Advanced Bodycare Solutions, LLC v. Thione Int., Inc.*** 524 F.3d 1235, 1238 (11th Cir. 2008). Petitioner maintains that this jurisdiction standard established by the Eleventh Circuit is contrary to the standard established by this Court in ***Bruno, (no federal cause of action no federal jurisdiction),,*** supra and applied by the Fifth Circuit in ***Campbell,*** supra.

In the present case, the district court held petitioner's claims were dismissed for the following reasons: (1) 1983 claims were barred by this Court's decision in ***Heck v. Humphrey,*** 512 U.S. 477 (1994) (holding a challenge to a conviction must be ruled invalid before a Section 1983 action can be cognizable), the judge was protected by "absolute judicial immunity" and (3) it "is not clear from Plaintiff's Complaint the exact basis for his RICO claims." Petitioner maintained that his RICO action was based on state RICO laws and that ***he did not allege a federal cause of action.***

Because the district court concluded, petitioner did not allege a federal cause of action against the respondents, the case should have been remanded to the state court for lack of jurisdiction pursuant to

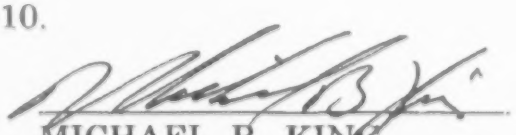
the jurisdiction standard in *Bruno.* The district court also lacked jurisdiction under 1983 because the respondents City of Byron and its officials were not "persons" under Section 1983 as this Court held in *Bruno,* at 2225-2226.

Both the district court and Eleventh Circuit Applied the incorrect standard for determining jurisdiction in a case removed from state court. The proper standard established by this court should have been applied. ***No federal cause of action, no federal jurisdiction.*** Petitioner maintains the lower courts mistakenly believed the district court had jurisdiction to grant respondents' motion to dismiss after applying an incorrect standard. The case should have been remanded for lack of jurisdiction..

## CONCLUSION

This Court has a duty to correct the jurisdiction mistake and reverse and vacate the Eleventh Circuit and district court's decision. See ***Mottley,*** supra.

This 16th day of July, 2010.



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*Appendix A*

## *ORDER DENYING REHEARING*

Filed Feb 16, 2010
Thomas K. Kahn Clerk

IN THE UNITED STATES COURT
OF APPEALS
FOR THE ELEVENTH CIRCUIT

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No. 09-10812-AA

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MICHAEL BERNARD KING,

Plaintiff-Appellant,

Versus

ERIC FARRIS, individually and in his Official capacity as police officer for City of Byron, KAREN AROMATORIO, Individually and in her official capacity As judge for the City of Byron, CITY OF BYRON GEORGIA,

Defendants-Appellees.

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On Appeal from the United States Court
For the Middle District of Georgia

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ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING
EN BANC

Before: TJOFLAT, EDMONSON and BLACK, CIRCUIT JUDGES.

PER CURIAM:

The Petition(s) for Rehearing are Denied and no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/

UNITED STATES CIRCUIT JUDGE

# Appendix B

# ELEVENTH CIRCUIT'S DECISION

B1

[DO NOT PUBLISH]

FILED DECEMBER 16, 2009

IN THE UNITED STATES COURT
OF APPEALS
FOR THE ELEVENTH CIRCUIT

---

No. 09-10812
Non-Argument Calendar

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D.C. Docket No. 08-00186CV(CAR-5)

MICHAEL BERNARD KING,

Plaintiff-Appellant,

versus

ERIC FARRIS, Individually and in his Official Capacity as Police Officer for the City of Byron, KAREN AROMATORIO, Individually and in her official Capacity As Judge for the City of Byron, et al.,

Defendants-Appellees.

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B2

Appeal from the United States District Court for the Middle District of Georgia

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(December 16, 2009)

Before TJOFLAT, EDMONDSON and BLACK, Circuit Judges,

PER CURIAM:

Michael King, an attorney proceeding *pro se*, appeals the dismissal of his civil rights complaint and the district court's imposition of sanctions pursuant to Federal Rule of Civil Procedure 11(b). King contends the district court did not have subject-matter jurisdiction over his complaint. King asserts the court was therefore without authority to dismiss the complaint and impose Rule 11 sanctions, and it should have instead reconsidered its dismissal and granted the motion to remand case.

## I. JURISDICTION, DISMISSAL, AND RECONSIDERATION

We review questions of jurisdiction *de novo*, including a district court's denial of a motion to remand. *Bailey* v. *Janssen Pharmaceutica Inc.*, 536 F.3d 1202, 1204 (11th Cir. 2008). Pursuant to the well-pleaded complaint rule, a suit "arises under" federal law when "the

plaintiff's statement of his own cause of action shows that it is based upon federal law." *Vaden v. Discover Bank*, 129 S.Ct. 1262, 1272 (2009) (quotations and alteration omitted). "A complaint alleging a colorable federal cause of action confers district court jurisdiction even if the complaint is u8ltimately dismissed for failure to state a claim." *Advanced Bodycare Solutions, LLC v. Thione Int'l., Inc.*, 524 F.3d 1235, 1238 *(11th Cir. 2008).*

King has conflated the requirements for a district court to assert jurisdiction with those Necessary for a claim to survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). His complaint expressly relies upon federal law, and thus the district court did not err in exercising its subject-matter jurisdiction. Because King has only argued the district court's dismissal was improper on jurisdictional grounds, he abandoned any argument the dismissal was inappropriate on other grounds. *See Corbitt v. Home Depot U.S.A., Inc.* 573 F.3d 1223, 1253 n.21 (11th Cir. 2009) 574 (stating arguments are abandoned if not presented in a party's brief on appeal).

Regarding King's motion for reconsideration, "a motion that merely republishes the reasons that had failed to convince the tribunal in the

first place gives the tribunal no reason to change its mind" *Calle v. U.S. Att'y Gen,* 504 F.3d 1324, 1329 (11th Cir. 2007) (quotations omitted). King's motion for reconsideration merely restated his previously submitted arguments, and the district court did not abuse its discretion in denying it. *See Makro Capital of Am., Inc. v. UBS AG,* 543 F.3d 1254, 1261 (11th Cir. 2008) (reviewing a denial of a motion for reconsideration for abuse of discretion).

## II. SANCTIONS

The court's award of sanctions and attorneys' fees was not an abuse of discretion. *See Massengal v. Ray,* 267 F.3d 1298, 1301 (11th Cir. 2001) (reviewing a district court's award of Rule 11 sanctions for abuse of discretion).
for reasons previously stated, King's argument
The court was without jurisdiction to award
sanctions is inapposite. The district court
Considered King's suit a means to harass a
police officer and a judge, and it concluded
King's motion to remand and his continued
arguments the complaint did not involve a
federal question were frivolous. King sued the
city, a police officer, and traffic court judge for
$1.5 million based on an unfavorable disposition
of a citation in traffic court. When the case was
removed to federal court, he sought to remand the
case back to state court, despite the complaint's

express invocation of multiple federal statutes and the United States Constitution. After the district court dismissed the case for failure to state a claim, King continued to argue the case did not involve a federal cause of action. On the morning of the hearing, King filed a motion to reconsider, which was substantially a recitation of his original argument, and he moved to recuse the presiding judge, despite knowing of the judge's involvement for many months. "The goal of Rule 11 sanctions is to reduce frivolous claims, defenses, or motions, and to deter costly meritless maneuvers." *Massengale,* 267 F.3d at 1302 (quotations omitted). considering King's actions and arguments in this case, the district court did not abuse its discretion when it determined that sanctions would advance that goal.

## III. RECUSAL

King's recusal motion was premised on the district judge's participation as an attorney in an unrelated case that was litigated several years prior. Although the district judge previously participated in unrelated Litigation in which King was involved, the record contains no indication that he harbored any resulting bias or prejudice. Further, King failed to raise the issue of recusal until the morning of the sanction hearing, despite the removal to Judge

Royal's courtroom several months earlier. Even assuming King's motion should not be denied as untimely, a judge's service as a attorney in an unrelated matter several years earlier would not raise significant reasonable doubts about his impartiality, and the district judge did not abuse his discretion by denying King's motion to recuse. *See United States v. Siegelman*, 51 F.3d 1215, 1243 (11th Cir. 2009) (stating untimeliness of motion, for recusal is basis on which to deny it): *United States v Amedeo*, 47 F.3d 823, 828-29 (11t Cir. 2007) (reviewing district judge's decision not to recuse himself for abuse of discretion, stating "[o]inions held by judges as a result of what they learned in earlier proceedings do not constitute bias or prejudice")

AFFIRMED.

*APPENDIX "C"*

*DISTRICT COURT'S ORDER*

C1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

MICHAEL B. KING,

5:08CV186(CAR)

Plaintiff

v.

ERIC FARRIS, individually and in his official capacity as a police officer for the City of Byron; KAREN AROMATORIO, individually and in her official capacity as a judge for the City of Byron; and the CITY OF BYRON, GEORGIA,

Defendants.

ORDER ON DEFENDANTS' MOTION TO DISMISS, PLAINTIFF'S MOTION TO REMAND, and ORDER TO SHOW CAUSE

Currently before the Court are Defendants" Motion to Dismiss [Doc. 2] in which Defendants contend that plaintiff's Complaint should be dismissed for failure to state a claim upon which relief may be granted, and Plaintiff's Motion to Remand to the Peach County Superior Court [Doc. 4] in which Plaintiff contends this Court has no jurisdiction over his claims. Plaintiff is a licensed attorney in the State

of Georgia who represents himself in this action. For the reasons expressed herein, Defends' Motion [Doc. 2] is **GRANTED**; Plaintiff's Motion {Doc. 4] is **DENIED**; and Plaintiff's claims are hereby **DISMISSED**. Also for reasons explained, the Court further **ORDERS** Plaintiff to appear before this Court on December 17, 2008, at 9:30 a.m. to **SHOW CAUSE** why he should not be sanctioned and/or ordered to pay Defendants' attorney's fees pursuant to Federal Rule of Civil Procedure 11 for filing baseless pleadings.

## FACTUAL AND PROCEDURAL HISTORY

This case stems from Plaintiff's receipt of a speeding ticket and his subsequent speeding conviction in Peach County, Georgia. According to the facts alleged in the Complaint, on May 6, 2006, Plaintiff was driving south on I-75 when Defendant Officer Eric [F]arris stopped him for speeding. Officer [F]arris told Plaintiff that his speed detection device recorded him traveling in excess of the posted speed limit and issued Plaintiff a speeding citation and a court date.

On August 21, 2006, Plaintiff appeared in Defendant Judge Karen Aromatorio's court for his traffic hearing. At the hearing Plaintiff attempted to have the speed detection device results suppressed on various grounds. Including

grounds the Officer [F]arris was operating the device outside Byron's city limits. Judge Aromatorio denied Plaintiff's motion. At the end of the hearing, plaintiff was found guilty of speeding and ordered to pay a fine.

Thereafter, on May 6, 2008, Plaintiff filed his complaint in Peach County Superior Court alleging that Officer Farris, Judge Aromatorio, and the City of Byron are guilty of violating federal statutes 42 U.S.C. Sections 1983, 1988, and 1991; the Fourteenth and Fourth Amendments of the United States Constitution; Federal Rico Statutes; and the Georgia Constitution and unidentified Georgia statutes. Specifically, Plaintiff claims that Judge Aromatorio unlawfully denied his motion to suppress the speed detection results and failed to inform him of his right to a jury trial. plaintiff contends that the city of Byron collected a large portion of its revenue from traffic fines unlawfully imposed on drivers by Judge Aromatorio, which in turn was based on the unlawful use of speed detection devices operated off I-75 south in Peach County by Officer Farris and other city police officers. Plaintiff asserts that Judge Aromatorio and Officer Farris received income directly or indirectly, from illegally imposed traffic fines. Finally, Plaintiff contends that Defendants unlawfully extorted fines from Plaintiff through a pattern of racketeering activity and action to collect an unlawful debt which affected interstate commerce.

Defendant removed the case to this Court pursuant to 28 U.S.C. [Sections] 1446(a) and 1441(a), (b), and (c) based on the Court's original jurisdiction founded under federal law and the United States Constitution. Defendants now move to dismiss Plaintiff's claims, and Plaintiff moves to have his claims remanded back to state court.

## ANALYSIS

### A. Motion to Dismiss

A motion to dismiss does not test whether plaintiff will prevail on the merits of the case; it tests the legal sufficiency of the complaint. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) Accordingly, the Court must accept the facts alleged in the complaint as true and construe all reasonable inferences in the light most favorable to the plaintiff. Kirby v. Siegeman, 195 F.3d 1285, 1289 (11th Cir. 1999). If the facts contained in the complaint would allow plaintiff to recover under any possible theory, the motion to dismiss must be denied. Linder v. Portocarrero, 963 F.2d 332, 336 (11th Cir. 1992). If, however, "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief," the plaintiff's claims must be dismissed. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

Here, Plaintiff's claims are subject to dismissal for several reasons. First, Plaintiff's [Section] 1983 claims are barred by the United States Supreme Court's ruling in Heck v. Humphrey, 512 U.S. 477 (1994). The Supreme Court held in Heck that

> [T]o recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a [section] 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. [Section] 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under [Section] 1983.

Id. At 486-87. Thus, a plaintiff in a civil suit alleging an unconstitutional conviction cannot bring an action under [section] 1983 without proving that the subject conviction has been invalided. Hence, Plaintiff's claims are not cognizable under [section] 1983 because his speeding conviction has not been reversed on direct Appeal, expunged, invalidated by a tribunal, questioned

By a writ of habeas corpus. See Kroger v. Florida, 130 Fed. Appx. 327 (2005) (pro se plaintiff's [section] 1983 claims dismissed pursuant to Heck because plaintiff was impermissibly seeking to challenge a traffic conviction by filing a [section] 1983 action.

Second, Plaintiff's claims regarding Judge Aromatorio are subject to dismissal because she is entitled to judicial immunity. Under the doctrine of absolute immunity, "[j]udges are entitled to absolute judicial immunity from damages for acts taken while they are acting in their judicial Capacity unless they acted in the clear absence of all jurisdiction." Bolin v. Story, 225 F. 3d 1234, 1239 (11th Cir. 2000). Here, there is no allegation that Judge Aromatorio was not acting in her judicial capacity or without jurisdiction when she adjudicated Plaintiff guilty of speeding. Thus, she is entitled to judicial immunity, and this suit is subject to dismissal on all federal and state law claims against her.

Finally, Plaintiff's claims under the federal RICO statute (18 U.S.C. [section] 1961 et seq.) are also subject to dismissal as he fails to state a claim upon which relief can be granted. To prevail on a civil RICO claim, a plaintiff must prove three essential elements: (1) a violation of [section] 1962; (2) injury to business or property; and (3) that the violation caused the injury." Avirgan v. Hull, 932 F.2d 1572, 1577 (11th Cir. 1991). It is not clear

from Plaintiff's Complaint the exact basis for his RICO claims. Plaintiff merely states that the "defendants unlawfully extorted fines from plaintiff through a pattern of racketeering activity and action to collect an unlawful debt and such action affected interstate commerce." (Pl. Compl. [para] 20) However, Plaintiff does not claim any injury apart from his conviction. Thus, he does not allege any injuries to "business or property." moreover, although the Eleventh Circuit has not addressed the applicability of Heck to RICO claims, a number of other courts have held that the Heck rule applies with equal force to civil RICO claims. See e.g. Williams v. Hill, 878 F. Supp. 269 (D..D.C. 1995), affirmed, 74 F.3d 1339 (D.C. Cir. 1996) (concluding that Heck was applicable to civil RICO action; Hermansen v. Chandler, 211 F.3d 1269. *2 (6th Cir. 2000) (unpublished opinions) ("This court has consistently applied the [Heck] principle to civil actions under RICO . . .") (citing other unpublished Sixth Circuit cases); but see Hunter v. Gates, 2001 WL 837697 at *3-4 (C.D. Cal 2001) (holding that the Heck rule does not apply to civil RICO claims).

B. Motion to Remand

In lieu of filing a response to Defendants' Motion to Dismiss, Plaintiff, a licensed attorney in the State of Georgia, filed a Motion to Remand his case to the Peach County Superior court, ridiculously contending that this Court does not

have original jurisdiction over his claims. Paragraph one of Plaintiff's Complaint plainly States: "This action is brought pursuant to 42 U.S.C. Sections 1983, 1988 and 1991, RICO, 18 U.S.C. Sections 1961 et seq., the Fourth and Fourteenth Amendments to the United States Constitution and Georgia's statutory and constitutional laws"; paragraph 19 of the complaint states: "The defendant's action and inaction violated plaintiff's fourth Amendment rights to protection from unreasonable search and seizure"; and paragraph 20 of the Complaint States: "The defendants unlawfully extorted Fines from plaintiff through a pattern of Racketeering activity and action to collect an Unlawful debt and such action affected interstate commerce." Plaintiff's contention that this case should be remanded to state court because he has not raised "a cause of action under the Constitution, laws, or treaties of the United States" is clearly baseless. Plaintiff has unquestionably raised questions of federal law in his Complaint, and Defendants have properly removed this case in compliance with 28 U.S.C. [sections] 1441 and 1446.

## C. Order to Show Cause

Based on Plaintiff's baseless claims and his Motion to Remand, he is hereby ordered to appear before this Court on December 2, 2008, at 9:30 a.m. to show cause why he should not be sanctioned and/or ordered to pay Defendants' attorney's fees pursuant to Federal Rule of Civil Procedure 11. Rule 11 sanctions are proper "(1) when a party files a pleading that has no reasonable factual basis; (2) when the party files a pleading that is based on a legal theory that has no reasonable chance of success and that cannot be advanced as a reasonable argument to change existing law; or (3) when the party files a pleading in bad faith for an improper purpose." Jones v. Int'l Riding Helments, Inc., 49 F.3d 692 694 (11th Cir. 1995). Courts have a wide variety of possible sanctions to impose for violation of Rule 11, including ordering a fine payable to the court. Fed.R.Civ.P. 11. Advisory Committee notes, 1993 Amendments. Moreover, "if imposed on motion and warranted for effective deterrence, [courts may issue an] order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses directly resulting from the violation." Fed.R.Civ.P. 11(c)(4).

## CONCLUSION

For the reasons explained above, Plaintiff's claims must be dismissed. Defendant's Motion to Dismiss [Doc. 2] this action is **GRANTED**;

Plaintiff's Motion to Remand [Doc. 4] is **DENIED**; and Plaintiff's federal claims are hereby **DISMISSED**. As a result of the dismissal of Plaintiff's federal claims, this Court hereby declines to exercise supplemental jurisdiction over the remaining state law claims. Consequently, those claims are dismissed without prejudice. Pursuant to Rule 11(c)(3), Plaintiff is also **ORDERED** to appear before this Court on December 2, 2008, at 9:30 a.m. to **SHOW CAUSE** why he should not be sanctioned and/or ordered to pay Defendants' attorney's fees for filing baseless pleadings.

**SO ORDERED** this 3rd day of December, 2008.

S/C Ashley Royal
**C. ASHLEY ROYAL**
**U.S. DISTRICT JUDGE**

No. 10-567

# In The
# Supreme Court of the United States

MICHAEL B. KING,

*Petitioner,*

v.

ERIC FARRIS, KAREN AROMATORIA, AND THE CITY OF BYRON, GEORGIA,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## BRIEF IN OPPOSITION


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## QUESTION PRESENTED

Whether Petitioner has presented compelling reasons to grant the Petition, where Petitioner contends there is no federal subject matter jurisdiction despite the fact that Petitioner filed a complaint that expressly alleged violations of the federal constitution and federal statutory laws.

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42 U.S.C. § 1983 ..... 1, 2

42 U.S.C. § 1988 ..... 1, 2

42 U.S.C. § 1991 ..... 1, 2

RULES:

Fed. R. Civ. P. 12(b)(6) ..... 1

Sup. Ct. R. 10 ..... 3

Sup. Ct. R. 42.2 ..... 5

## STATEMENT OF THE CASE

This action arises from a pro se attorney's attempt to sue a police officer, a judge, and a city for $1,500,000 over a traffic citation. Petitioner, the pro se attorney, drafted and filed a complaint in state court that expressly raised federal constitutional claims as well as claims under federal statutes. Petitioner's Complaint read as follows: "This action is brought pursuant to 42 U.S.C. Sections 1983, 1988, and 1991, RICO, 18 U.S.C. Sections 1961 et seq., the Fourth and Fourteenth Amendments to the United States Constitution and Georgia's statutory and constitutional laws."

Despite the clear language of Petitioner's Complaint, Petitioner claims the District Court had no subject matter jurisdiction over the matter. Furthermore, Petitioner has insisted that he did not raise or allege a federal cause of action. Finally, Petitioner appears to contend that because the District Court dismissed the case under Federal Rule of Civil Procedure 12(b)(6), the District Court's subject matter jurisdiction vanished.

Clearly such contentions do not comprise "compelling reasons" for the exercise of this Court's jurisdiction. As a result, the Petition for Writ of Certiorari should be denied.

## STATEMENT OF FACTS

On May 6, 2008, Petitioner filed, on his own behalf, a complaint in Peach County Superior Court seeking money damages of $500,000.00 and punitive damages of $1,000,000. Respondents were served with summons and a copy of the complaint on May 9, 2008. The suit is based on a May 2006 traffic stop conducted by Officer Eric Farris and an August 2006 traffic court hearing conducted by Judge Aromatorio. On May 6, 2006, Petitioner was driving south on I-75 in Peach County, Georgia. Officer Farris stopped Petitioner on I-75 for traveling in excess of the posted speed limit and issued Petitioner a citation and an August 2006 court date.

Petitioner's traffic court hearing was held on August 21, 2006. At the conclusion of the 2006 hearing, Petitioner was found guilty of speeding and was ordered to pay a fine. Rather than a simple case of crime and punishment, Petitioner filed suit and contended that the City of Byron, Officer Farris, and Judge Aromatorio were guilty of violating Federal Constitutional Law, 42 U.S.C. Sections 1983, 1988, and 1991; Federal RICO Statutes; as well as the Georgia Constitution and unidentified Georgia statutes.

Paragraph 1 of Petitioner's Complaint states: "This action is brought pursuant to 42 U.S.C. Sections 1983, 1988 and 1991, RICO, 18 U.S.C. Sections 1961 et seq., the Fourth and Fourteenth Amendments

to the United States Constitution and Georgia's statutory and constitutional laws." Paragraph 19 of the Complaint states: "The defendants' action and inaction violated plaintiff's Fourth Amendment rights to protection from unreasonable search and seizure." Paragraph 20 of the Complaint states: "The defendants unlawfully extorted fines from plaintiff through a pattern of racketeering activity and action to collect an unlawful debt and such action affected interstate commerce." Petitioner now contends, in his brief to this Court, that the District Court never had jurisdiction to hear the case.

## REASONS FOR DENYING THE PETITION

The decisions below did not conflict with the decisions of this Court or any Court of Appeals nor do they implicate a federal question that has not been decided by this Court. As a result, Petitioner has not carried his burden of demonstrating a "compelling reason" for the Petition to be granted. *See* Sup. Ct. R. 10.

### Federal Subject Matter Jurisdiction Existed as Petitioner's Complaint Clearly Raised Federal Claims.

The Petition for Writ of Certiorari should be denied as the only question presented by Petitioner concerns federal subject matter jurisdiction. Given the language used by Petitioner in his Complaint,

this is a case of obvious federal subject matter jurisdiction. Under the well-pled complaint rule, an action "arises under" federal law "only when the plaintiff's statement of his own cause of action shows that it is based upon [federal law]." *Vaden v. Discover Bank*, 129 S.Ct. 1262, 1272 (2009). Where a complaint alleges a colorable federal cause of action, a district court has subject matter jurisdiction even if the complaint is dismissed for failure to state a claim. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89, 118 S.Ct. 1003 (1998).

The first paragraph of Petitioner's Complaint references various federal statutes as well as multiple federal constitutional amendments. Petitioner raised additional federal questions in paragraphs 19 and 20 of his Complaint. Accordingly, Petitioner's Complaint alleged a colorable federal cause of action under *Vaden* and *Steel Co.* giving the District Court subject matter jurisdiction when the case was removed to federal court.

Petitioner appears to argue that, despite the well-pled contentions in his complaint, because the Respondents sought and obtained a Rule 12(b)(6) dismissal, the District Court never possessed subject matter jurisdiction to hear the case. This contention finds no support in the law and contradicts the well-pled complaint rule and this Court's holding in *Steel Co.* Respondents timely removed the case to federal court pursuant to 28 U.S.C. § 1441(a), (b), and (c), and therefore, the case was properly before the

Federal District Court for the Middle District of Georgia. As a result, the District Court had subject matter jurisdiction and Petitioner's appeal is without merit.

## REQUEST FOR COSTS

Petitioner, an attorney acting pro se, has now argued to a federal district court, a federal court of appeals, and the Supreme Court of the United States of America that a complaint he drafted to include claims of violations of federal constitutional and statutory law did not plead a cause of action arising under federal law. Petitioner's appeal is frivolous and nonsensical. Therefore, Respondents request that this Court award them double costs under Supreme Court Rule 42.2.

## CONCLUSION

Based on the foregoing, this Court should deny the Petition for Writ of Certiorari and award Respondents double costs.

Respectfully submitted,

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